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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

IN RE: BRCA1- AND BRCA2-BASED HEREDITARY CANCER TEST PATENT LITIGATION	MDL CASE NO. 2:14-MD-2510 RJS **District Judge Robert J. Shelby** **Magistrate Judge Dustin B. Pead**

DEFENDANTS' SHORT FORM MOTION TO COMPEL PRODUCTION OF A 30(b)(6) WITNESS TO TESTIFY REGARDING TOPIC NOS. 93-98

Defendants seek testimony on 30(b)(6) topics related to positions taken by Myriad in prior litigations involving the patents and technology at issue in this case. (Ex. A; Topic Nos. 93-98). The Court has already stated that Myriad's prior positions are pertinent to this litigation. Dkt. No.

55, fn. 4. During those litigations, Myriad took positions regarding the patented technology and other issues that are relevant to this litigation. For example, the CEO of Myriad testified during his deposition that he believed that Myriad had taken positions regarding available non-infringing alternatives during the *AMP* litigation. (Ex. B). Myriad, however, refuses to designate a witness to testify regarding the prior litigations. Instead, Myriad argues that (1) the information sought is privileged, (2) seeks information regarding Myriad's contentions, and (3) is publicly available. (Ex. C)

As an initial matter, Myriad does not dispute that the testimony sought by Defendants in response to these topics is relevant. There is no doubt that it is—positions taken relating to the same or similar technologies are highly relevant and constitute party admissions. These may include admissions regarding the strength of various patents, non-infringing alternatives, etc. There is no doubt that this information falls within the broad scope of Rule 26.

Myriad's objections are baseless. First, Defendants are not asking for privileged information but merely seeking testimony regarding the ultimate positions that Myriad previously took and the underlying factual bases for those positions. To the extent Myriad believes that Defendants' questions implicate privilege, Myriad is welcome to instruct the witness not to answer and the parties can determine what to do from there.

Second, Myriad's attempt to avoid offering responsive corporate testimony, by arguing that the topics necessarily implicate contentions, is without merit. Just because the positions taken were in litigation does not mean that they were contentions. Even if they were contentions in the prior litigation, they are now facts. At a minimum, Defendants are entitled to know the underlying facts that formed the bases for those contentions.

Finally, Myriad's argument that the requested testimony is publicly available also fails. Myriad's prior discovery responses and deposition transcripts are not publicly available and cannot be found on any Court docket. Further, Myriad has refused to produce such information in this case. As such, Myriad is trying to hamstring Defendants from discovering information regarding prior positions taken by Myriad that are highly likely to be directly relevant to issues in this case. Myriad should not be allowed to hide behind baseless objections to preclude Defendants from discovering this information. There can be no doubt that Myriad is in the best position to provide this highly relevant discovery.

Defendants accordingly request that the Court hear oral argument on these crucial matters and compel Myriad to produce a 30(b)(6) witness on these topics. Defendants certify that the parties made reasonable efforts to reach agreement on the disputed matters during a telephonic conference on October 20, 2014 at 2:30 p.m. in which counsel for all plaintiffs and all defendants participated.

Dated: October 23, 2014

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CERTIFICATE OF SERVICE

On this 23rd day of October 2014, I certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system that will send an electronic notification to counsel of record herein:

Dated: October 23, 2014

/s/ Jared J. Braithwaite
Jared J. Braithwaite